International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O. Local 412 (Asolo Center for the Performing Arts) *and* Karl Franz Von Mann. Case 12–CB–3463

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issues presented for Board review here are whether the judge[1] correctly found that: the Respondent had failed to prove that Section 10(b) of the Act barred the filing of an unfair labor practice charge; the Respondent violated Section 8(b)(1)(A) of the Act by running an exclusive hiring hall without any objective referral standards; and the Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Karl Franz Von Mann to available jobs. The Board[2] has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order as modified.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O. Local 412, Sarasota, Florida, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 1(c).

''(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

[1] On March 27, 1991, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions, a supporting brief, and a request for oral argument. The General Counsel filed an answering brief and a motion to strike the Respondent's exceptions. The Respondent filed a response to the motion to strike. The city of Sarasota filed an answering brief to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] On September 8, 1992, the General Counsel filed a motion to remand proceedings to administrative law judge and reopen record for the receipt of evidence relative to unfair labor practice allegations in a complaint issued in Case 12–CB–3463 on August 21, 1992. We deny the motion to remand.

We deny the General Counsel's motion to strike the Respondent's exceptions and brief. We also deny the Respondent's request for oral argument because the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that in sec. III, par. 1 of his decision, the judge erroneously stated that the city of Sarasota operates the Asolo Center for the Performing Arts. The record clearly shows that the Asolo Center is a private nonprofit employer. Contrary to the Respondent's exceptions, the assertion of the Board's jurisdiction in this case is validly based on the operations of the Asolo Center.

[4] We wish to clarify the judge's analysis at sec. II,D, par. 4 by denying any implication that the absence of written hiring hall standards, standing alone, was unlawful. The Respondent violated Sec. 8(b)(1)(A) of the Act because it operated an exclusive hiring hall without any *objective* standards, written or unwritten.

[5] The judge's recommended Order does not include the complete remedial language usually used by the Board to enjoin a respondent from engaging in ''like or related'' unlawful conduct. We shall include the correct language in a modified Order.

David Anhorn, Esq. and *Peter J. Salm, Esq.*, for the General Counsel.

Mark Kelly, Esq. (Kelly & McKee, P.A.), of Tampa, Florida, for the Respondent.

Peter Hooper, Esq., of St. Petersburg, Florida, for Sarasota and Sarasota Opera Association.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on October 10, 1991, at Sarasota, Florida, and is based on a complaint filed on May 31, 1991, by the Acting Regional Director for Region 12 of the National Labor Relations Board. The complaint as amended at the hearing is based on a charge filed by Karl Franz Von Mann, an individual (the Charging Party) on March 26, 1991, and alleges that International Alliance of Theatrical Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O. Local 412 (the Respondent or the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by since on or about September 27, 1990, failing and refusing and continuing to fail and refuse to register for referral and refer to employment Karl Franz Von Mann with Asolo Center for the Performing Arts (Asolo or the Employer) and other employers for unfair and for arbitrary reasons other than his failure to tender periodic dues and the initiation fee unilaterally required as a condition of acquiring or retaining membership in Respondent. The complaint alleges that since on or about October 1, 1988, Respondent entered into an agreement or maintained a practice with Asolo's and other Employers' employees which provides for the referral of employees without benefit of written or published referral standards or objective consistent standards and pursuant to the totally subjective discretion of its Business Representative Martin Petlock. The complaint is joined by the answer of Respondent Union as amended at the hearing wherein it admits the employment

status of Asolo but asserts as an affirmative defense that the National Labor Relations Board (the Board) lacks jurisdiction over the matters set forth in the complaint, and that such matters are barred by the limitations period set forth in Section 10(b) of the Act.

Upon the foregoing complaint and answer, the evidence submitted at the hearing including the testimony of the witnesses, and after due consideration of the briefs submitted by the parties I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *Business of the Employer*

The complaint alleges, Respondent amended its answer at the hearing to admit, and I find that at all times material herein the Asolo Center for the Performing Arts (Asolo) a Florida nonprofit corporation has maintained an office and place of business in Sarasota, Florida, where it is engaged in the presentation of theatrical productions, that during the 12 months prior to the filing of the complaint, Asolo, in the course and conduct of its business operations described above received gross revenues in excess of $500,000 and purchased and received goods and materials valued in excess of $2000 directly from suppliers located outside the State of Florida and that Asolo is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is also alleged in the complaint, Respondent admitted at the hearing, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES[1]

A. *Facts*

As set out above there are two alleged violations of the Act involved in this case. One is that the Union failed and refused and continues to fail and refuse to refer for employment under its exclusive hiring hall system Karl Franz Von Mann, one of its members in good standing in violation of Section 8(b)(1)(A) and (2) of the Act and the second is that the Union has operated and continues to operate an exclusive hiring hall without any written or published referral standards or objectively consistent standards in violation of Section 8(b)(1)(A) of the Act. The Respondent has denied the alleged violations and has asserted as an affirmative defense that they are barred by 10(b) of the Act as the charge was filed in excess of 6 months after the alleged commission of the Act. Based on the facts hereinafter outlined in this decision and the conclusions of law reached herein, I find that the General Counsel established a prima facie case of both violations as alleged in the complaint, which the Respondent failed to rebutt by the preponderance of the evidence. I find that the Section 10(b) affirmative defense raised by the Respondent is without merit. The facts in this case are largely undisputed. Martin Petlock has been the Union's business representative since 1988 and previously served as its president and treasurer. The Union operates an exclusive hiring hall for employees in the theatrical business and refers employees to various entertainment and theatrical venues in the Sarasota, Florida area. In his capacity as business representative of the Union, Petlock operates the hiring hall and decides who will be referred for employment to the various jobs for which employees are required in the theatrical business in the Sarasota area. The largest employer of employees referred by the Union is the Asolo which is a civic center operated by the city of Sarasota where various theatrical productions are held. The Union's members operate as sound men, lighting men and stage hands and generally perform all of the work necessary to set the stage, establish the proper lighting, change the scenery and operate a sound system. In its operation of the hiring hall the Union does not have any published or written standards or criteria. Nor was there any objective criteria established by the evidence presented at the hearing. Rather, Petlock decides who will be referred to jobs based on his own subjective determinations and in accordance with an informal call system by prospective employers. There is no out-of-work list maintained wherein an employee is placed on a list and referrals are made on a rotational basis. Petlock testified that much of the work is sporadic and many of the employees using the hiring hall are employed in other jobs and often unavailable for referral. Some members are employed with a much greater frequency than others as they are regularly called for by employers or there is a tacit understanding that they are to be referred when certain employers such as the Asolo call for employees. Petlock testified that members and employees referred by the Union often have other jobs such as a fishing boat captain, a chef, the operation of a lawn care business, and some are members of circuses who travel extensively and are available only during certain times of the year. Some of the work involved is skilled requiring experience and some of the work involves only basic skills requiring the movement of settings or loading or unloading of settings. Additionally, some of the employees may from time to time start with a travel show in Sarasota and be hired by that employer to travel elsewhere with the show.

Karl Franz Von Mann became a member of the Union in January 1981 and has since been a member in good standing. He received referrals for employment from the Union from January 1981 until he left the Sarasota area in 1986. He returned to Sarasota in the fall of 1989 and sent a letter to the Union dated October 16, 1989, setting out his qualifications and stating the he was available for referrals to employment. Von Mann testified he is able to perform 90 percent of the work available under the Union's jurisdiction. In response to Von Mann's request for referrals Petlock sent him a letter dated November 11, 1989, which accused him of a number of asserted improprieties and demanded that he sign the letter stating that he understood that he could no longer engage in such activities. The letter is as follows:

> Dear Franz:
>
> I received your phone message today. Had I known you were available I might have put you to work on the 15th but as I write that call is filled. Thinking about

[1] General Counsel's unopposed motion to correct transcript is granted. Page 22 L. 18 is corrected to read ''system for employees without written or published referral.'' Page 188 L. 10 is corrected to read ''10(b) period violates the Act.''

your return to our jurisdiction, I have to tell you that I have some reservations about giving you work calls which I will share with you. Quite frankly, I think that I would like you to agree in writing just to make sure we understand each other.

1. At management's request, my predecessor removed you from the Van Wezel roster. Their major complaint was that you spent far too much time on ''Union Politics.'' Union business is NOT to be brought into the workplace or discussed on the employers time and some of our contracts now state this. Please DO start coming to meetings, the proper forum for such discussion. It is also the only place to air any charges or accusations concerning the officers of this organization.

2. You were perfectly well aware of the payment time from Van Wezel. It used to be 4–6 weeks. I've got that down to 3–5 weeks. If you are not willing to wait that length of time I suggest you not accept calls there.

3. We have become very strict about the use, influence or possession of controlled substances in or near our workplaces. Please be very careful about this. I hope you no longer indulge but all our agreements state instant dismissal for violations.

4. All written agreements with management contain an exclusive bargaining situation. You have always been forthright about setting up meetings with our venues but in future you should do so only through the local. Your privately arranged meetings should not tempt management to breach our contracts.

5. Our International Reps are stretched thin enough. If you have problems or complaints you have an obligation to ''exhaust internal remedies'' before exercising your right to go to the International. If you don't like me then talk to our president. If he's the problem then you should see a member of your Executive Board. You can contact President Meyrich at 813–355–1014 to receive their names and numbers. There are two members at large whose job is to be your representative.

6. In past you have committed unlawful acts that could have created serious problems for the local. I refer specifically to the Murray Periha incident and your practice of taping conversations without informing the participants and replaying those tapes as ''evidence.'' Actions such as these will not be tolerated.

I do not enjoy writing this sort of letter. In view of your past actions and relations with this Local I do feel it to be necessary. I hold no animosity towards you and hope you will agree to and abide by the above conditions so that we may return you to our active list as soon as possible.

Yours sincerely,
/s/ Marty Petlock
Marty Petlock
Business Agent

Although the letter purported to be from Petlock it was not signed by Petlock, and Von Mann returned the letter to Petlock because it had not been signed by Petlock. Petlock returned this letter to Von Mann and sent a followup letter to Von Mann dated November 27, 1989, which demanded that Von Mann sign the November 11 letter, thus at least implicitly acknowledging the improprieties alleged in the November 11 letter. The Union had never taken such an action or made such a demand on an employee prior to this time. Von Mann had never been charged with any of the alleged improprieties which he was asked to acknowledge in the November 11 letter. On November 28, 1989, Petlock offered a referral to Von Mann for November 30, 1989, which Von Mann was unable to accept because of a prior commitment. On that date Von Mann sent a letter to Petlock thanking him for the referral and advising him that he was committed until December 28, 1989. Petlock then offered Von Mann a referral for December 1, 1989, although Von Mann had advised in his letter that he was unavailable for work until after December 28, 1989. Von Mann received no further referrals and on April 1, 1990, he again wrote Petlock reminding him of his availability for referrals. On April 6, 1990, Petlock notified Von Mann that the Respondent had no work but that he might be able to obtain work through the Tampa IATSE local union and that he (Von Mann) could contact it.

Prior to the charge filed in the instant case, Von Mann filed a charge in Case 12–CB–3358 on May 4, 1990, which alleged a violation of Section 8(b)(1)(A) of the Act by the Union's insistence that Von Mann sign the November 11 letter as a condition to be referred for employment. This charge was dismissed in part because Von Mann had told the Region that he had been told there was no work available in the Sarasota area but had been advised by the Union to contact the Tampa local union for referrals in that area. In order to aid in the investigation of this charge in Case 12–CB–3358 Von Mann requested in a letter dated May 9, 1990, sent to Victor Meyrich, the Union's president that the Union's referral records from December 28, 1989, to May 9, 1990, be made available to him for review as he was generally aware that other employees were being referred for employment whereas he was not. The Union refused this request. Von Mann next filed a charge in Case 12–CB–3395 on August 25, 1990, alleging the refusal to furnish the information concerning the lists as a violation of Section 8(b)(1)(A) of the Act. The Union's attorney responded to this charge by a letter of October 17, 1990, advising Von Mann the records would be made available to him for review and Von Mann thereupon withdrew the charge in Case 12–CB–3395 based on this assurance. However, Petlock continued to refuse to supply the records to Von Mann and demanded $100 to furnish the information. Von Mann rejected this demand but offered to pay the cost of copying the records and again reminded Petlock of his availability for work. Consequently, Von Mann filed a subsequent charge in Case 12–CB–3434 on December 11, 1990, again alleging a refusal to furnish the records. This charge culminated in a settlement agreement approved by the Regional Director wherein the Union agreed to supply the records. However, the records were not provided until March 20, 1990, and consisted of invoices sent to employees by the Union for referrals made through the Union hiring hall. No referral list, out-of-work list, or list of availability of employees was received. Petlock

testified at the hearing that no such list exists. Upon receipt Von Mann was at last in possession of documents verifying that other employees were being referred for work by the Union whereas he was not. Von Mann then requested the records for up to April 1991 which were received in June 1991 and which showed numerous referrals by the Union subsequent to September 27, 1990. The charge in the instant case was filed March 26, 1991, and the complaint was issued May 31, 1991.

The Respondent presented evidence through the testimony of its Business Representative Petlock who testified concerning Von Mann's alleged misconduct as set out in Petlock's November 11, 1989 letter. Petlock contended at the hearing that during Von Mann's absence from the Sarasota area from the Union's jurisdiction during the 2-year period prior to November 1989, the employers using the Union's referral system had substantially tightened working conditions and that Petlock was merely attempting to ensure the integrity of the Union's referral system and the availability of work for its members by requiring Von Mann to acknowledge his alleged offenses set out in Petlock's November 11 letter to Von Mann and to agree not to commit them again. Petlock's letter alleges several improprieties by Von Mann. Petlock testified at the hearing concerning certain of the alleged improprieties. Jerry Jagielski, a management official at the Von Wezel hall, testified he had informed the Union not to send him Von Mann for a short period in 1986 because he engaged in discussing union politics on the job and his failure to perform a task as Jagielski wanted it done but denied that he had informed the Union that Von Mann should be permanently barred from employment there. At the hearing Von Mann denied the various allegations of wrongdoing set out in Petlock's letter.

B. *Statement of the Issues*

There are four separate issues cited by the parties in their briefs: (1) Whether the complaint is time barred by Section 10(b) of the Act; (2) whether the Union arbitrarily refused to refer Von Mann for employment in violation of the Act; (3) whether the Union has operated and continues to operate an exclusive hiring hall without written or published referral standards or objectively consistent standards pursuant to the totally subjective discretion of Business Representative Petlock; and (4) whether the Union's refusal to refer Von Mann is justified because of his alleged violation of referral hall rules by engaging in repeated direct solicitation of employment at venues under contract with the Union, thus barring his entitlement to a remedy.

C. *Contentions of the Parties*

The General Counsel contends this action is not time-barred by Section 10(b) of the Act as the referral system as operated currently is violative of the Act and that the filing of the charge with respect to conduct going back to September 27, 1990, the 6-month cutoff date prior to the filing of the charge in the instant case on March 26, 1991, is timely. Any argument that Von Mann was on notice of the Union's refusal to refer him by the November 11, 1989 letter, thus constituting the date of the violation making the instant charge untimely, ignores both the fact that Petlock did not specifically advise Von Mann that he was not being referred but rather offered to refer him for employment in November and December 1989 and advised him in April 1990 that there was no work in the Sarasota area and suggested he contact the Tampa area local union of IATSE for referrals. Furthermore, the refusal to disclose its referral records to Von Mann further impeded his obtaining definite proof that he was not being referred as evidenced by the dismissal of the original charge, Von Mann's filing of two separate charges based on the refusals to furnish the referral records and the subsequent delay in furnishing the records even after the Union entered into a settlement agreement to do so.

The General Counsel also contends that the Union arbitrarily and invidiously refused to refer Von Mann for employment. The Union presented no competent evidence to support its allegations concerning Von Mann or the truth of these reasons. Jagielski refuted the Union's claim that Von Wezel Hall would not employ Von Mann. Assuming arguendo that the allegations were true (which Von Mann denied at the hearing) the Union has internal disciplinary procedures available to it but chose not to utilize them and instead to punish Von Mann by refusing to refer him for employment. The General Counsel further contends that the Union has also violated the Act by its operation of an exclusive hiring hall without benefit of written or published standards or objectively consistent standards and pursuant to the totally subjective discretion of Business Representative Petlock.

The General Counsel further contends that the Union's refusal to refer Von Mann is not justified because of his alleged violation of referral hall rules by direct solicitation of employment with employers in the Union's jurisdiction. With respect to this issue Von Mann contended he was applying only for management jobs which he asserts are not within the Union's jurisdiction. There is no question Von Mann's efforts in this regard were in good faith and were not surreptitious and were occasioned by the Union's unlawful refusal to refer Von Mann for employment and that the Union has ways to lawfully deal with perceived violations of union rules but chose not to invoke them.

The Respondent contends the complaint is barred by Section 10(b) of the Act and should be dismissed. It contends the 6-month limitation period began to run on November 11, 1989, when the Union wrote Von Mann and advised Von Mann ''unequivocally'' that he would receive no referrals prior to his acknowledging the changed working conditions. It further argues that, ''this case does not encompass a continuing violation.'' The Union further contends that the refusal to refer Von Mann was neither unfair nor arbitrary as the General Counsel has not proved that the Union operates an exclusive hiring hall and that consequently there is ''no duty of fair representation'' owed by the Union to Von Mann and ''a violation of the Act can be found only if it is shown that the Union somehow retaliated against Von Mann based on his [exercise of] rights protected under the Act.'' The Respondent argues further that even if the General Counsel could establish the existence of an exclusive referral procedure, the General Counsel has failed to show the Union treated Von Mann in an unfair or arbitrary manner as its ''treatment of Von Mann was based solely on work-related considerations which were entirely relevant to the operation of its referral procedure.'' The Respondent contends there was no evidence of hostility toward Von Mann and therefore the refusal to refer him for work-related reasons was not arbitrary

or capricious and no violation can be found notwithstanding the lack of records of the operation of the hiring hall. The Respondent also argues that there is ''no evidence that Petlock's interpretation of the referral procedures, or of the Union's duties and responsibilities under such procedure, is unreasonable.'' Respondent also contends that the alleged direct dealing by Von Mann with potential employers was a violation of its referral rules and ''constitutes a legitimate, non-discriminatory reason for suspending [him] from the referral procedure.''

The Respondent also contends that its operation of its referral procedure is not violative of the Act as the complaint does not allege the hiring hall is exclusive and in the absence of ''such an allegation, even a wholly subjective referral procedure does not in and of itself violate the Act.'' Assuming arguendo the referral system is exclusive, the General Counsel has failed to prove the procedure violates the Act, as there was no evidence of abuse of the referral system such as granting preferences to ''its own members, or supporters of its incumbent leadership.'' Respondent further contends that Von Mann's alleged persistent violation of its exclusive referral arrangement precludes his entitlement to relief as such conduct ''would warrant his suspension from the referral procedure.''

D. *Analysis*

I find at the outset that the complaint is not barred by Section 10(b) of the Act. Initially I do not accept Respondent's argument that the November 11, 1989 letter constituted the critical date of the violation upon which the statute began to run. As contended by the General Counsel, the letter is ambiguous and does not clearly state that no referrals will be given to Von Mann. Also as contended by the General Counsel, the Union was sending Von Mann mixed signals as it did offer him referrals in November and December 1989. Although Von Mann clearly had a basis for suspecting that the Union would not refer him out until he signed the letter, the letter did not unequivocally state that he would not be referred out until he signed it. The offer of referrals in November and December certainly did not form a basis for concluding that Von Mann was not being referred out because of his refusal to sign the letter, notwithstanding Petlock's subsequent letter demanding that Von Mann sign the letter and get to work. As time went on and Von Mann received no further referrals, he made additional inquiries of the Union and was advised there was no work in the Sarasota area but was also advised to contact the local IATSE union in Tampa, Florida. This proved to be false as during April a large number of referrals were made by the Union while none were offered to Von Mann. Subsequently, his attempts to obtain information were rebuffed and it was not until March 1991 that Von Mann received documentation that other employees were being referred out while he was not. Under these circumstances I find the Respondent has not met its burden in asserting Section 10(b) of the Act as an affirmative defense on both factual grounds as to when Van Mann was fully apprised of the Union's refusal to refer him while referring other employees to employment within its jurisdiction and also on equitable grounds as its mixed signals in initially referring Von Mann in November and December 1989 and its representation to him in April 1990 that there was no work available in its jurisdiction placed Von Mann in an uncertain and confusing situation. Furthermore, the Union's various refusals and delays in furnishing its records for Von Mann's review served only to further impede his investigation of this matter. Under all of these circumstances I find that the Union has failed to meet it burden of proof in asserting Section 10(b) as an affirmative defense and that the Union should not benefit from its concealment of the true facts from Von Mann. See *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 996 (1986), relying on language in *Strick Corp*., 241 NLRB 210 fn. 1 (1979), wherein the Board said ''notice whether actual or constructive, must be clear and unequivocal and that the burden of showing such notice is on the party raising the affirmative defense of Section 10(b).'' See *Burgess Construction Corp*., 227 NLRB 765 (1977), enfd. 596 F.2d 378 (9th Cir. 1979), cert. denied 444 U.S. 940 (1979), wherein the Board held that the 10(b) period of limitations was tolled from the commencement of the unlawful conduct until the charging party union acquired knowledge of it and held that the remedy should not be limited to the 6-month period preceding the filing of the charge as ''To find otherwise would allow Respondent to escape from providing a full remedy as a result of the successful concealment of their unlawful conduct.'' See also *Barnard Engineering Co*., 275 NLRB 208 (1989), wherein the Board adopted the administrative law judges' finding that the Union's charge was not barred by Section 10(b) as the Union did not have clear notice of the alleged violations of the Act more than 6 months before it filed its charge.

With respect to the purported reason for the letter and the Union's insistence that Von Mann acknowledge at least implicitly having been guilty of the various alleged improprieties contained in the letter of November 11, 1989, and consent to no longer engage in them, it is now clear the Union was asking Von Mann to acknowledge these improprieties and that in the absence of his doing so, the Union chose not to refer him. It is undisputed that Von Mann was a dues-paying member in good standing qualified to perform 90 percent of the work available to the Union through the operation of the referral hall which I find based on the undisputed evidence was an exclusive hiring hall.

The Union's refusal to refer Von Mann was clearly arbitrary and invidious discrimination and constituted a violation of Section 8(b)(1)(A) and (B) of the Act. If the Union had legitimate problems with Von Mann's past conduct on the job or in his work-related dealings in the Union's jurisdiction, it had available to it, its own internal procedures for bringing charges against Von Mann. However, it did not do so but rather treated him as having been charged and found guilty by imposing on him economic sanctions by refusing to refer him for employment. See *Stage Employees IATSE Local 646 (Parker Playhouse)*, 270 NLRB 1425 (1985). Similarly I reject the Respondent's assertion at the hearing that Von Mann should not be reinstated to the Union's referral system because of his resort to self help in seeking employment within the Union's jurisdiction. At the outset it should be noted that Von Mann's individual job search was occasioned by the Union's refusal to refer him for employment without any semblance of fairness in doing so. Further, Von Mann contends he applied only for management jobs which he contends were not within the Union's jurisdiction. Here again the Union did not utilize its internal procedures for determining the validity of its or Von Mann's position on

this issue but now seeks to rely on this as a reason for precluding Von Mann from receiving referrals. I find its reliance thereon is also misplaced. See *Longshoremen Local 341 (West Gulf Maintenance Assn.)*, 254 NLRB 334 (1981); *Longshoremen Local 1408 (Jacksonville Maritime Assns.)*, 258 NLRB 132 (1981); *Plumbers Local 553 (Plumbers Contracting)*, 271 NLRB 1361 (1984).

With respect to the operation of the hiring hall, this is a continuing ongoing operation and Section 10(b) does not apply. I find that the Respondent has violated Section 8(b)(1)(A) of the Act by the operation of the hiring hall in the complete absence of any standards or written rules or maintenance of a written eligibility list. While it is true that under certain circumstances the Board has not found a violation on the basis of the mere absence of these standards and rules, in the instant case, it is clear that the absence of these standards, rules, or eligibility list were utilized to thwart Von Mann's efforts to seek employment in the Sarasota area and thus a violation of Section 8(b)(1)(A) of the act has occurred and is continuing to occur by the Union's operation of its hiring hall without adequate standards, rules or eligibility list. *Parker Playhouse*, supra.

CONCLUSIONS OF LAW

1. Respondent, International Alliance of Theatrical Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O. Local 412, is a labor organization within the meaning of Section 2(5) of the Act.

2. Asolo is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

3. The complaint is not barred by Section 10(b) of the Act.

4. By its maintenance and operation of a practice and/or an agreement with Asolo and covering certain of Asolo's and other employer's employees which provides for the referral of employees without benefit of written or published standards and pursuant to the totally subjective discretion of Business Representative Petlock, Respondent Local 412 violated Section 8(b)(1)(A) of the Act.

5. By its failure and refusal since on or about September 27, 1990, to register for referral and refer to employment with Asolo and other employers employee Karl Franz Von Mann, Respondent has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

6. The aforesaid unfair labor practices in conjunction with the Employer's status as an employer engaging in interstate commerce affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent Local 412 has violated the Act, it will be recommended that it cease and desist therefrom and take certain affirmative actions to remedy the violations including the posting of an appropriate notice. Local 412 shall make Karl Franz Von Mann whole for all loss of earnings and benefits sustained by him as a result of its failure and refusal to refer him for employment, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950). Backpay and benefits shall be with interest as computed in *New Horizons for the Retarded*, 282 NLRB 760 (1987).[1] It is also recommended that Respondent Local 412 be ordered to establish and maintain objective criteria and standards for the referral of employees from its hiring hall.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, International Alliance of Theatrical Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O. Local 412, Sarasota, Florida, its officers, agents, successors, and representatives, shall

1. Cease and desist from

(a) Maintaining and operating a hiring hall without objective criteria and standards for the referral of employees.

(b) Refusing and failing to refer employees for employment for arbitrary and invidious reasons.

(c) In any like or related manner violating the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Establish and maintain objective criteria and standards for the referral of employees from its hiring hall.

(b) Refer Karl Franz Von Mann and other employees for employment and make him whole for the loss of earnings and benefits he sustained by reason of its refusal and failure to refer him with interest as set out in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Remove from its records any reference to the alleged misconduct of Von Mann and inform him in writing that this has been done and that such records, if any exist, will not be used against him in any manner in the future.

(e) Post at its hall or facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[1] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C § 6624.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and operate a hiring hall without objectives standards and criteria for the referral of employees.

WE WILL NOT refuse and fail to refer employees for employment because of arbitrary and invidious reasons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL establish and maintain, on a nondiscriminatory basis objective standards and criteria by which the referral system is to operate.

WE WILL make Karl Franz Von Mann whole for the loss of earnings and benefits he suffered by our failure and refusal to refer him for employment.

WE WILL remove from our records all references to the unlawful actions taken against Von Mann and will notify him in writing that they shall not be used against him in any manner in the future.

INTERNATIONAL ALLIANCE OF THEATRICAL EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, I.A.T.S.E. & M.P.M.O. LOCAL 412